

## LEGISLATIVE BILL 134

Approved by the Governor February 14, 1995

Introduced by Revenue Committee: Warner, 25, Chairperson; Coordsen, 32; Kristensen, 37; Landis, 46; Schellpeper, 18; Wickersham, 49

AN ACT relating to revenue and taxation; to amend sections 77-1784, 77-2770, and 81-1249, Reissue Revised Statutes of Nebraska, and sections 77-2702.17, 77-2711, 77-2733, and 77-27188, Revised Statutes Supplement, 1994; to change provisions relating to electronic filings and payments; to change sales and use tax provisions; to change income tax provisions; to redefine terms; to provide operative dates; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 77-1784, Reissue Revised Statutes of Nebraska, is amended to read:

77-1784. (1) The Tax Commissioner may use accept electronic filing of applications, returns, and any other document required to be filed with the Tax Commissioner.

(2) The Tax Commissioner may use and electronic fund transfers to collect the taxes imposed by Chapter 77 any taxes, fees, or other amounts required to be paid to or collected by the Tax Commissioner or to pay any refunds allowed under Chapter 77 of such amounts.

(3) The Tax Commissioner may adopt rules and regulations to establish the criteria for acceptability of filing documents and making payments electronically. The criteria may include the type of tax for which electronic filings or payments will be accepted, the method of transfer, or minimum amounts. The Tax Commissioner may refuse to accept any electronic filings or payments that do not meet the criteria established or that are made before the establishment of the criteria.

(4) The use of electronic filing of ~~returns documents~~ and electronic fund transfers shall not change the rights of any party from the rights such party would have if a different method of filing or payment were used. The document produced during the electronic filing of a taxpayer's information ~~to~~ with the state shall be prima facie evidence for all purposes that the taxpayer's signature accompanied the taxpayer's information in the electronic transmission.

Sec. 2. Section 77-2702.17, Revised Statutes Supplement, 1994, is amended to read:

77-2702.17. (1) Sales price shall mean the total amount for which property is sold valued in money whether paid in money or otherwise, without any deduction on account of:

(a) The cost of the property sold;

(b) The cost of material used, labor or service cost, interest paid, losses, or any other expenses;

(c) The cost of transportation of the property. The total amount for which property is sold shall include any services which are a part of the sale and any amount for which credit is given to the purchaser by the seller;

(d) The cost of computer software contained on the property; or

(e) The cost of any license, franchise, or lease for the use of computer software or entertainment properties such as videotapes or movie films.

(2) Sales price shall not mean any of the following:

(a) Cash discounts allowed and taken on sales;

(b) The amount of any rebate granted by a motor vehicle or motorboat manufacturer or dealer at the time of sale of the motor vehicle or motorboat, which rebate functions as a discount from the sales price of the motor vehicle or motorboat;

(c) The amount refunded for property returned by customers when all or part of the amount charged therefor is refunded either in cash or credit;

(d) The amount charged for finance charges, carrying charges, service charges, or interest from credit extended on sales of property under contracts providing for deferred payments of the purchase price if such charges are not used as a means of avoiding imposition of the tax upon the actual sales price of the property;

(e) The value of property taken by a seller in trade as all or a part of the consideration for a sale of property of any kind or nature;

(f) The value of a motor vehicle or motorboat taken by any person in trade as all or part of the consideration for a sale of another motor vehicle

or motorboat;

(g) The amount charged for labor or services rendered in annexing property to real estate; or

(h) The amount charged for labor or services rendered in installing and or applying the property sold if such amount is separately stated and such separate statement is not used as a means of avoiding imposition of the tax upon the actual sales price of the property.

Sec. 3. Section 77-2711, Revised Statutes Supplement, 1994, is amended to read:

77-2711. (1)(a) The Tax Commissioner shall enforce sections 77-2702.03 to 77-2713 and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of such sections.

(b) The Tax Commissioner may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

(2) The Tax Commissioner may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of the Nebraska Revenue Act of 1967 and may delegate authority to his or her representatives to conduct hearings, prescribe regulations, or perform any other duties imposed by such act.

(3)(a) Every seller, every retailer, and every person storing, using, or otherwise consuming in this state property purchased from a retailer shall keep such records, receipts, invoices, and other pertinent papers in such form as the Tax Commissioner may reasonably require.

(b) Every such seller, retailer, or person shall keep such records for not less than three years from the making of such records unless the Tax Commissioner in writing sooner authorized their destruction.

(4) The Tax Commissioner or any person authorized in writing by him or her may examine the books, papers, records, and equipment of any person selling property and any person liable for the use tax and may investigate the character of the business of the person in order to verify the accuracy of any return made or, if no return is made by the person, to ascertain and determine the amount required to be paid. In the examination of any person selling tangible personal property or of any person liable for the use tax, an inquiry shall be made as to the accuracy of the reporting of city sales and use taxes for which the person is liable under the Local Option Revenue Act and the accuracy of the allocation made between the various cities and villages of the tax due. The Tax Commissioner may make or cause to be made copies of resale or exemption certificates and may pay a reasonable amount to the person having custody of the records for providing such copies.

(5) The taxpayer shall have the right to keep or store his or her records at a point outside this state and shall make his or her records available to the Tax Commissioner at all times.

(6) In administration of the use tax, the Tax Commissioner may require the filing of reports by any person or class of persons having in his, her, or their possession or custody information relating to sales of property, the storage, use, or other consumption of which is subject to the tax. The report shall be filed when the Tax Commissioner requires and shall set forth the names and addresses of purchasers of the property, the sales price of the property, the date of sale, and such other information as the Tax Commissioner may require.

(7) It shall be a Class I misdemeanor for the Tax Commissioner or any official or employee of the Tax Commissioner to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and activities of any retailer or any other person visited or examined in the discharge of official duty or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any return, or to permit any return or copy thereof, or any book containing any abstract or particulars thereof to be seen or examined by any person not connected with the Tax Commissioner. Nothing in this section shall be construed to prohibit (a) the delivery to a taxpayer, his or her duly authorized representative, or his or her successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, of a certified copy of any return or report in connection with his or her tax, (b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, (c) the inspection by the Attorney General, other legal representative of the state, or county attorney of the reports or returns of any taxpayer when either (i) information on the reports or returns is considered by the Attorney General to be relevant to any action or proceeding instituted by the taxpayer or against whom an action or proceeding is being considered or has been commenced by any state agency or the county or (ii) the taxpayer has instituted an action to review the tax based thereon or an action or proceeding against the taxpayer

for collection of tax or failure to comply with the Nebraska Revenue Act of 1967 is being considered or has been commenced, (d) the furnishing of any information to the United States Government or to states allowing similar privileges to the Tax Commissioner, (e) the disclosure of information and records to a collection agency contracting with the Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, or (f) the disclosure to another party to a transaction of information and records concerning the transaction between the taxpayer and the other party.

(8) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit the Postal Inspector of the United States Postal Service or his or her delegates to inspect the reports or returns of any person filed pursuant to the Nebraska Revenue Act of 1967 when information on the reports or returns is relevant to any action or proceeding instituted or being considered by the United States Postal Service against such person for the fraudulent use of the mails to carry and deliver false and fraudulent tax returns to the Tax Commissioner with the intent to defraud the State of Nebraska or to evade the payment of Nebraska state taxes.

(9) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may permit other tax officials of this state to inspect the tax returns, reports, and applications filed under sections 77-2702.03 to 77-2713, but such inspection shall be permitted only for purposes of enforcing a tax law and only to the extent and under the conditions prescribed by the rules and regulations of the Tax Commissioner.

(10) Notwithstanding the provisions of subsection (7) of this section, the Tax Commissioner may, upon request, provide the county board of any county which has exercised the authority granted by section 81-1254 with a list of the names and addresses of the hotels located within the county for which lodging sales tax returns have been filed or for which lodging sales taxes have been remitted for the county's County Visitors Promotion Fund under the Nebraska Visitors Development Act.

The information provided by the Tax Commissioner shall indicate only the names and addresses of the hotels located within the requesting county for which lodging sales tax returns have been filed for a specified period and the fact that lodging sales taxes remitted by or on behalf of the hotel have constituted a portion of the total sum remitted by the state to the county for a specified period under the provisions of the Nebraska Visitors Development Act. No additional information shall be revealed.

(11) In all proceedings under the Nebraska Revenue Act of 1967, the Tax Commissioner may act for and on behalf of the people of the State of Nebraska. The Tax Commissioner in his or her discretion may waive all or part of any penalties provided by the provisions of such act, but may not waive the minimum interest on delinquent taxes specified in section 45-104.02, as such rate may from time to time be adjusted, except interest on use taxes voluntarily reported by an individual.

Sec. 4. Section 77-2733, Revised Statutes Supplement, 1994, is amended to read:

77-2733. (1) The income of a nonresident individual derived from sources within this state shall be the sum of the following:

(a) The net amount of items of income, gain, loss, and deduction entering into his or her federal taxable income which are derived from or connected with sources in this state including (i) his or her distributive share of partnership income and deductions determined under section 77-2729, (ii) his or her share of small business corporation or limited liability company income determined under section 77-2734.01, and (iii) his or her share of estate or trust income and deductions determined under section 77-2725; and

(b) The portion of the modifications described in section 77-2716 which relates to income derived from sources in this state, including any modifications attributable to him or her as a partner.

(2) Items of income, gain, loss, and deduction derived from or connected with sources within this state are those items attributable to:

(a) The ownership or disposition of any interest in real or tangible personal property in this state; and

(b) A business, trade, profession, or occupation carried on in this state; and

(c) Any lottery prize awarded in a lottery game conducted pursuant to the State Lottery Act.

(3) Income from intangible personal property including annuities, dividends, interest, and gains from the disposition of intangible personal property shall constitute income derived from sources within this state only to the extent that such income is from property employed in a business, trade, profession, or occupation carried on in this state.

(4) Deductions with respect to capital losses, net long-term capital

gains, and net operating losses shall be based solely on income, gains, losses, and deductions derived from or connected with sources in this state, under rules and regulations to be prescribed by the Tax Commissioner, but otherwise shall be determined in the same manner as the corresponding federal deductions.

(5) If a business, trade, profession, or occupation is carried on partly within and partly without this state, the items of income and deduction derived from or connected with sources within this state shall be determined by apportionment under rules and regulations to be prescribed by the Tax Commissioner.

(6) Compensation paid by the United States for service in the armed forces of the United States performed by a nonresident individual shall not constitute income derived from sources within this state.

(7) Compensation paid by a resident estate or trust for services by a nonresident fiduciary shall constitute income derived from sources within this state.

(8) Compensation paid by a business, trade, or profession shall constitute income derived from sources within this state if:

(a) The individual's service is performed entirely within this state;

(b) The individual's service is performed both within and without this state, but the service performed without this state is incidental to the individual's service within this state;

(c) The individual's service is performed without this state, but the service performed without this state is related to the transactions and activity of the business, trade, or profession carried on within this state; or

(d) Some of the service is performed in this state and (i) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in this state or (ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

Sec. 5. Section 77-2770, Reissue Revised Statutes of Nebraska, is amended to read:

77-2770. (1)(a) The Tax Commissioner may grant a reasonable extension of time for filing any return, statement, or other document, or for payment of income tax or estimated tax or any installment thereof, on such terms and conditions as he or she may require. Except in the case of a taxpayer who is abroad, no such extension or extensions shall exceed a total of seven months.

(b) An extension of time granted for filing of a return, other than to a corporate taxpayer, shall for the purpose of this subsection extend the time for payment of any tax which may be due. An extension of time for filing any return granted by the Internal Revenue Service for other than a corporate taxpayer shall operate as an extension under this section.

(2) An extension for the filing of the return of corporate income taxes imposed by section 77-2734.02 shall be allowed any corporation or other entity taxed as a corporation if, in such manner and at such time as the Tax Commissioner may by regulation prescribe, there is filed on behalf of such corporation the form prescribed by the Tax Commissioner and if such corporation pays, on or before the date prescribed for payment of the tax determined without regard to any extension of time for filing such return, the amount properly estimated as its tax; but this extension may be terminated at any time by the Tax Commissioner by mailing to the taxpayer notice of such termination at least ten days prior to the date for termination fixed in such notice. No extension of time for filing any corporate return shall be considered an extension of time for payment of corporate income tax unless such request is specifically filed with and granted by the Tax Commissioner.

The Tax Commissioner may grant reasonable additional extensions of time to file any corporate income tax return on such terms and conditions as he or she may require.

(3) If any extension of time is granted for payment of any amount of tax, the Tax Commissioner may require the taxpayer to furnish a bond or other security in an amount not exceeding twice the amount of the tax for which the extension of time for payment is granted, on such terms and conditions as the Tax Commissioner may require.

Sec. 6. Section 77-27,188, Revised Statutes Supplement, 1994, is amended to read:

77-27,188. (1)(a) A credit against the taxes imposed by the Nebraska Revenue Act of 1967 shall be allowed to any taxpayer engaged in a qualifying business as described in section 77-27,189 who increases the

employment of such business in this state by two new full-time employees and who makes an increased investment in this state of at least seventy-five thousand dollars during a taxable year.

(b) Any taxpayer who has been allowed a credit under subdivision (1)(a) of this section during the preceding five taxable years, not counting carryovers, shall be allowed a credit for an increase in employment in this state by two new full-time employees.

(2) Except as provided in subsection (3) of this section, the amount of the credit shall be one thousand five hundred dollars for each new employee and one thousand dollars for each seventy-five thousand dollars of increased investment.

(3) For any taxpayer described in subdivision (1)(a) of this section which is also located within the boundaries of an enterprise zone as defined and designated by the Department of Economic Development pursuant to the Enterprise Zone Act, the amount of the credit shall be:

(a) Four thousand five hundred dollars for each new employee and three thousand dollars for each seventy-five thousand dollars of increased investment if at least fifty percent of the new employees of the taxpayer reside within the boundaries of the enterprise zone; or

(b) Four thousand five hundred dollars for each new employee residing within the boundaries of the enterprise zone, one thousand five hundred dollars for each new employee not residing within the boundaries of the enterprise zone, and one thousand dollars for each seventy-five thousand dollars of increased investment if less than fifty percent of the new employees of the taxpayer reside within the boundaries of the enterprise zone.

The credit allowed to a taxpayer pursuant to this subsection shall not exceed seventy-five thousand dollars in any one tax year.

For purposes of this subdivision, employees residing within the boundaries of an enterprise zone shall be construed to mean employees residing within a county in which an enterprise zone is located when the enterprise zone is not located in a city of the primary or metropolitan class.

For purposes of this subdivision, an employee residing within the enterprise zone shall mean an individual who is domiciled within the enterprise zone on the date of his or her hiring by the taxpayer and who remains continuously domiciled within the zone during the term of his or her employment.

The failure of a taxpayer to maintain the continuous employment of a resident employee or to replace him or her with another employee residing within the enterprise zone for the period of time set out in section 77-27,188.02 shall be deemed a failure to maintain the level of investment and employment that created the credit for purposes of section 77-27,188.02.

(4) The credit shall be applied as provided in section 77-27,188.01.

(5) Any taxpayer who has qualified for a credit in the amount set out in subsection (3) of this section may elect to receive either the amount as calculated pursuant to subsection (2) or (3) of this section.

Sec. 7. Section 81-1249, Reissue Revised Statutes of Nebraska, is amended to read:

81-1249. Occupancy shall mean the use or possession, or the right to the use or possession, of any space in a hotel if the space is one ordinarily used for accommodations and if the occupant's use, possession, or right to the use or possession ~~does not exceed~~ is for less than a period of thirty days.

Sec. 8. Sections 1, 2, 3, and 9 of this act become operative on October 1, 1995. Sections 5, 6, and 10 of this act are operative for taxable years beginning or deemed to begin on or after January 1, 1995, under the Internal Revenue Code of 1986, as amended. Sections 4 and 11 of this act are operative for any prizes awarded or installments paid during taxable years beginning or deemed to begin on or after January 1, 1995, under the Internal Revenue Code of 1986, as amended. The other sections of this act become operative on their effective date.

Sec. 9. Original section 77-1784, Reissue Revised Statutes of Nebraska, and sections 77-2702.17 and 77-2711, Revised Statutes Supplement, 1994, are repealed.

Sec. 10. Original section 77-2770, Reissue Revised Statutes of Nebraska, and section 77-27,188, Revised Statutes Supplement, 1994, are repealed.

Sec. 11. Original section 77-2733, Revised Statutes Supplement, 1994, is repealed.

Sec. 12. Original section 81-1249, Reissue Revised Statutes of Nebraska, is repealed.